

**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

JAY SHEPPARD, )  
)  
                    Claimant, )  
)  
                    v. )  
)  
PSYCHIATRIC SOLUTIONS, INC., dba )  
INTERMOUNTAIN HOSPITAL, )  
)  
                    Employer, )  
)  
                    and )  
)  
INDEMNITY INSURANCE COMPANY )  
OF NORTH AMERICA, )  
)  
                    Surety, )  
)  
                    Defendants. )  
\_\_\_\_\_ )

**IC 2006-007893**

**FINDINGS OF FACT,  
CONCLUSION OF LAW,  
AND RECOMMENDATION**

Filed December 24, 2007

**INTRODUCTION**

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Michael E. Powers, who conducted a hearing in Boise on August 9, 2007. Claimant was present and represented himself. Mark C. Peterson of Boise represented Employer/Surety. No testimony was taken but documentary evidence was admitted. The record remained open for 30 days to allow Claimant the opportunity to retain an attorney and/or submit additional evidence. Defendants submitted a post-hearing brief; Claimant did not. No post-hearing depositions were taken and this matter came under advisement on October 30, 2007.

**ISSUE**

After notice to the parties and by agreement at hearing, the sole issue to be decided is whether Claimant is entitled to additional medical care.

**CONTENTIONS OF THE PARTIES**

Claimant contends that he is entitled to continuing medical care for a number of injuries he received at Employer's psychiatric care facility as his health continues to deteriorate.

Defendants contend that, as the result of accepting Claimant's claim, they have paid all the benefits to which Claimant is entitled and that Claimant has failed to provide any medical evidence that he needs any further treatment.

### **EVIDENCE CONSIDERED**

The record in this matter consists of the following:

1. Claimant's Exhibit 1 admitted post-hearing; and
2. Defendants' Exhibits A-Q admitted at the hearing.

After having considered all the above evidence and the brief of Defendants, the Referee submits the following findings of fact and conclusion of law for review by the Commission.

### **FINDINGS OF FACT**

1. On or about July 5, 2006, Claimant, a psychiatric technician at Employer's psychiatric hospital, was involved in a patient "riot" and was injured. On or about July 7, 2006, Claimant was struck by a patient in his left eye.
2. Defendants accepted Claimant's claims.
3. Claimant had undergone two cervical surgeries and one lumbar surgery prior to the subject accidents.

### **DISCUSSION AND FURTHER FINDINGS**

Idaho Code § 72-432(1) obligates an employer to provide an injured employee reasonable medical care as may be required by his or her physician immediately following an injury and for a **reasonable time** thereafter. It is for the physician, not the Commission, to decide whether the treatment is required. The only review the Commission is entitled to make is whether the treatment was reasonable. *See, Sprague v. Caldwell Transportation, Inc.*, 116 Idaho 720, 779 P.2d 395 (1989).

A claimant must provide medical testimony that supports a claim for compensation to a reasonable degree of medical probability. *Langley v. State, Industrial Special Indemnity Fund*, 126 Idaho 781, 890 P.2d 732 (1995). “Probable” is defined as “having more evidence for than against.” *Fisher v. Bunker Hill Company*, 96 Idaho 341, 344, 528 P.2d 903, 906 (1974). No “magic” words are necessary where a physician **plainly and unequivocally** conveys his or her conviction that events are causally related. *Paulson v. Idaho Forest Industries, Inc*, 99 Idaho 896, 901, 591 P.2d 143, 148 (1979). A physician’s oral testimony is not required in every case, but his or her medical records may be utilized to provide “medical testimony.” *Jones v. Emmett Manor*, 134 Idaho 160, 997 P.2d 621 (2000).

4. The only medical record in evidence that may lend some support to Claimant’s position is a “Neurological Consultation” dated July 10, 2007, authored by Michael O’Brien, M.D., a neurologist. Pertinent excerpts from that consultation include:

- The patient has seen a clinical psychologist, another neurologist, rehabilitation specialist, etc., all to no avail.
- At this point, the patient has gone back to work, but reports that after 3 days, he is home in bed and can hardly move and today when he presented to my office, he was virtually non-ambulatory, groping his way around the office with pain throughout his back and cervical region.
- The patient has been through all the diagnostic tests he needs at this point. I do believe that somebody should undertake to treat him for chronic nonmalignant pain and I will do so at this time very reluctantly.
- As I mentioned, this will be a most difficult patient to treat because of the time that has gone by since his injury and his lack of finances amongst other things.

Claimant's Exhibit 1.

5. Claimant has an extensive medical history pre-dating the subject accidents including two cervical surgeries as well as back surgery. *See*, Life-Fit records, Defendants' Exhibit J, p. 68.<sup>1</sup> His pre-accidents complaints are very similar to his post-accidents complaints. Prior to the subject injuries, Claimant had already been given permanent physical restrictions relating to his back. Claimant's treating physician, Christian Gussner, M.D., declared him at MMI as of November 30, 2006, with no impairment related to his July 2006 accidents. Dr. Gussner opined that Claimant's severe pre-existing "psychological issues" may be "limiting his treatment." Defendants' Exhibit B, p. 4. Allan R. Wilson, M.D., an orthopedic surgeon, in his December 7, 2006, IME report, indicated that Claimant had reached MMI, had no impairment related to the July 2006 accidents, and needed no further treatment relative thereto. Clay Ward, Ph.D., a psychologist, indicated in a "Psychological Pain Evaluation" dated on or about March 14, 2007, that Claimant suffered from pre-existing depression and was pain focused. He did not believe Claimant would benefit from psychological counseling because Claimant would not accept that psychological factors were contributing to the severity of his pain. In a December 10, 2006, letter to Jacob Kammer, M.D., Paul Montalbano, M.D., a neurosurgeon, reported that Claimant presented to his examination with a multitude of complaints that followed no dermatomal distribution and without any basis radiographically. Dr. Montalbano also noted, "[Claimant] is not a surgical candidate to his dismay." Defendants' Exhibit G, p. 45.

6. The overwhelming majority of the medical records in evidence leads to no other conclusion than that Claimant has failed to demonstrate his need for further medical care related to his July 2006 accidents and injuries. Even Dr. O'Brien, who expressed a reluctant willingness to treat Claimant, failed to articulate that the conditions for which he would undertake treatment were in any way related to his industrial accidents as opposed to his many pre-existing conditions.

7. The Referee finds that Claimant has failed to prove he is entitled to any further medical treatment for injuries sustained in his July 2006 accidents.

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<sup>1</sup> Other medical records indicate that Claimant had undergone two back surgeries and one cervical surgery.

## CONCLUSION OF LAW

Claimant is not entitled to any further medical care relating to injuries he may have received in his July 2006 industrial accidents.

## RECOMMENDATION

Based upon the foregoing Findings of Fact and Conclusion of Law, the Referee recommends that the Commission adopt such findings and conclusion as its own and issue an appropriate final order.

DATED this \_13<sup>th</sup>\_ day of December, 2007.

INDUSTRIAL COMMISSION

\_\_\_\_\_/s/\_\_\_\_\_  
Michael E. Powers, Referee

ATTEST:

\_\_\_\_\_/s/\_\_\_\_\_  
Assistant Commission Secretary

## CERTIFICATE OF SERVICE

I hereby certify that on the \_24th day of \_\_December \_\_, 200\_\_7, a true and correct copy of the **FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION** was served by regular United States Mail upon each of the following:

JAY SHEPPARD  
2520 JORETTA DR  
BOISE ID 83704

MARK C PETERSON  
PO BOX 829  
BOISE ID 83701

\_\_\_\_\_/s/\_\_\_\_\_

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Surety,

Defendants.

**IC 2006-007893**

**ORDER**

Filed December 24, 2007

Pursuant to Idaho Code § 72-717, Referee Michael E. Powers submitted the record in the above-entitled matter, together with his proposed findings of fact and conclusion of law to the members of the Idaho Industrial Commission for their review. Each of the undersigned Commissioners has reviewed the record and the recommendation of the Referee. The Commission concurs with this recommendation. Therefore, the Commission approves, confirms, and adopts the Referee's proposed findings of fact and conclusion of law as its own.

Based upon the foregoing reasons, IT IS HEREBY ORDERED that:

1. Claimant is not entitled to any further medical care relating to injuries he may have received in his July 2006 industrial accidents.

2. Pursuant to Idaho Code § 72-718, this decision is final and conclusive as to all issues adjudicated.

DATED this 24th day of December, 2007.

INDUSTRIAL COMMISSION

\_\_\_\_\_/s/\_\_\_\_\_  
James F. Kile, Chairman



\_\_\_\_/s/\_\_\_\_\_  
R. D. Maynard, Commissioner

\_\_\_\_/s/\_\_\_\_\_  
Thomas E. Limbaugh, Commissioner

ATTEST:

\_\_\_\_/s/\_\_\_\_\_  
Assistant Commission Secretary

### **CERTIFICATE OF SERVICE**

I hereby certify that on the \_24th day of \_\_December\_\_, 200\_7, a true and correct copy of the foregoing **ORDER** was served by regular United States Mail upon each of the following persons:

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2520 JORETTA DRIVE  
BOISE ID 83704

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